

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 07-0217**  
**Sales and Use Tax**  
**For The Tax Period 2006**

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**ISSUES**

**I.     Sales and Use Tax – Agricultural Exemption.**

**Authority:** IC § 6-2.5-2-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-5-1; IC § 6-8.1-5-1(c); 45 IAC 2.2-5-3(b); 45 IAC 2.2-5-1(a); *Indiana Dep't of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

The Taxpayer protests the imposition of use tax on a pre-engineered steel building.

**STATEMENT OF FACTS**

The Taxpayer is a corporation operating a farm. On June 6, 2006, the Taxpayer purchased a pre-engineered steel building and presented an exemption certificate to the seller. After an audit of the seller's sales and use tax liability, the Indiana Department of Revenue (Department) performed an investigation on the sales and use taxability of the pre-engineered steel building. As a result of the investigation, the Department assessed use tax, penalty, and interest against the Taxpayer. The Taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

**I.     Sales and Use Tax – Agricultural Exemption.**

**DISCUSSION**

The Taxpayer grows and processes melons pursuant to a franchise agreement with a major melon producing enterprise. Under the terms of the franchise agreement, the Taxpayer must cool the melons from the field temperature of ninety degrees to a temperature of fifty-five degrees within ten hours. The franchisor required that the Taxpayer build a particular type of structure for the processing of the melons. The Department assessed use tax on the Taxpayer's use of the pre-engineered building purchased for processing the melons. The Taxpayer protested the assessment claiming that the building qualified for exemption from the sales and use tax because it was directly used in the direct production of the melons for human consumption.

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.*

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. A complementary use tax is imposed at IC § 6-2.5-3-2(a) on the use of tangible personal property that was purchased in an Indiana retail transaction without the payment of sales tax.

A number of exemptions are available from use tax. All exemptions must be strictly construed against the party claiming the exemption. *Indiana Dep't of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 250 (Ind. 2003). IC § 6-2.5-5-1 provides for the agricultural exemption as follows:

Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for his direct use in the direct production of food and food ingredients or commodities for sale or for further use in the production of food and food ingredients or commodities for sale; and
- (2) the person acquiring the property is occupationally engaged in the production of food and food ingredients or commodities which he sells for human or animal consumption or uses for further food and food ingredient or commodity production.

The agricultural exemption is clarified at 45 IAC 2.2-5-3(b) as follows:

In general, purchases of tangible personal property by farmers are taxable. The exemptions provided by this regulation apply only to seeds, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food and agricultural commodities. This exemption is limited to “farmers.”

In this case, there is no question that the Taxpayer qualifies as a farmer since it grows and processes melons for human consumption. The issue to be determined is whether or not the pre-engineered building is directly used in the direct production of the melons.

45 IAC 2.2-5-1 (a) defines “directly used in direct production of food” as follows:

“To be directly used by the farmer in the direct production of food or agricultural commodities” requires that the property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or an agricultural commodity.

The pre-engineered building which the Taxpayer purchased and erected on its property is essentially a roof on poles. The sides are open. This design feature shelters the melons from the sun. The design also allows wind to blow through the melon’s temporary storage and processing area. Through shading the melons from the sun and allowing breezes to circulate around the

melons, the structure actually had the immediate effect of lowering the temperatures of the melons. If the Taxpayer attempted to process the melons in the open air under the sun or in a traditional building with four sides, the melons would not cool to the requisite fifty-five degrees in ten hours. The pre-engineered building performs an essential and integral part of the process of producing the Taxpayer's melons for human consumption by cooling the melons. Therefore, it qualifies for exemption from the Indiana sales and use tax pursuant to IC § 6-2.5-5-1.

**FINDING**

The Taxpayer's protest is sustained.

KMA/LS/DK-October 30, 2007